

## § 701.35

## 12 CFR Ch. VII (1–1–02 Edition)

### APPENDIX TO § 701.34

Disclosures and acknowledgment in the following form must be provided to any investor in secondary capital accounts in a low-income designated credit union.

An original, signed copy must be retained by the credit union.

#### DISCLOSURE AND ACKNOWLEDGMENT

I, \_\_\_\_\_ (name of signatory), hereby acknowledge and agree to the following in my capacity as \_\_\_\_\_ (official position or title) of \_\_\_\_\_ (name of institutional investor):

- \_\_\_\_\_ (name of institutional investor) has committed \_\_\_\_\_ (amount of funds) to a secondary capital account with \_\_\_\_\_ (name of credit union).

- The funds committed to the secondary capital account are committed for a period of \_\_\_\_\_ years and are not redeemable prior to \_\_\_\_\_.

- The secondary capital account is not a share account and the funds committed to the secondary capital account are not insured by the National Credit Union Share Insurance Fund or any other governmental or private entity.

The funds committed to the secondary capital account and any interest paid into the account may be used by \_\_\_\_\_ (name of credit union) to cover any and all operating losses that exceed the credit union's reserves and undivided earnings exclusive of allowance accounts for loan losses, and in the event the funds are so used \_\_\_\_\_ (name of credit union) will under no circumstances restore or replenish those funds to \_\_\_\_\_ (name of institutional investor).

By initialing below, \_\_\_\_\_ (name of credit union) \_\_\_\_\_ and (name of institutional investor) agree that accrued interest will be:

\_\_\_\_\_ paid into and become part of the secondary capital account;

\_\_\_\_\_ paid directly to the investor;

\_\_\_\_\_ paid into a separate account from which the investor may make withdrawals; or

\_\_\_\_\_ any combination of the above provided the details are specified and agreed to in writing.

- In the event of liquidation of \_\_\_\_\_ (name of credit union), the funds committed to the secondary capital account shall be *subordinate to all other claims* on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

- The NCUA may prohibit payments of principal, dividends or interest on \_\_\_\_\_ (name of credit union) uninsured secondary capital accounts established after August 7, 2000, if \_\_\_\_\_ (name of credit union) has been in operation less than 10 years and has \$10 million or less in assets and the provisions of § 701.34(b)(13) of NCUA's regulations are met, or, if \_\_\_\_\_ (name of credit union)

has been in operation for 10 years or more or has more than \$10 million in assets and the provisions of § 701.34(b)(12) of NCUA's regulations are met.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(official title)

[61 FR 3790, Feb. 2, 1996, as amended at 61 FR 50695, 50697, Sept. 27, 1996; 64 FR 72270, Dec. 27, 1999; 65 FR 21131, Apr. 20, 2000]

### § 701.35 Share, share draft, and share certificate accounts.

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in section 117 of the Act (12 U.S.C. 1763).

(b) A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral.

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

(d) For purposes of this section, "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[47 FR 17979, Apr. 27, 1982, as amended at 50 FR 4637, Feb. 1, 1985; 59 FR 50445, Sept. 27, 1993]

### § 701.36 FCU ownership of fixed assets.

(a) A Federal credit union's ownership in fixed assets shall be limited as described in this chapter.

(b) *Definitions*—As used in this section:

(1) Premises includes any office, branch office, suboffice, service center,